Supreme Court, U.S.
FILED
FEB 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-535 (6)

In the Supreme Court of the United States

OCTOBER TERM, 1989

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

KENNETH W. STARR
Solicitor General
STUART M. GERSON
Assistant Attorney General
THOMAS W. MERRILL
Deputy Solicitor General
CLIFFORD M. SLOAN
Assistant to the Solicitor General
ROBERT S. GREENSPAN
ROBERT D. KAMENSHINE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

42

QUESTION PRESENTED

Whether Social Security child's insurance benefits, paid under 42 U.S.C. 402(d), are "child support payments" within the meaning of an Aid to Families With Dependent Children (AFDC) provision, 42 U.S.C. 602(a)(8)(A)(vi), which requires that the first $50 per month of child support payments be disregarded in determining AFDC eligibility and assistance levels.

PARTIES TO THE PROCEEDINGS

The petitioner is the Secretary of Health and Human Services. The respondents are plaintiffs Elizabeth Stroop, Melissa Lam by her next friend Elizabeth Stroop, Bret Lam by his next friend Elizabeth Stroop, Jamie Stroop by her next friend Elizabeth Stroop, Geneva Powers, Crystal McClanahan by her next friend Geneva Powers, Dorothy Brown, and Robert Lee Turner by his next friend Dorothy Brown, on behalf of themselves and all others similarly situated. The plaintiffs in the district court included Karen B. Carter, Ragene Carter by her next friend Karen B. Carter, Paula Jones, Cory P. Jones by his next friend Paula Jones, and David L. Jones, but they were neither appellants nor appellees in the court of appeals. The Commissioner of the Virginia Department of Social Services was a defendant in the district court and a separate appellee in the court of appeals; unlike the Secretary of Health and Human Services, the Commissioner was not an appellant in the court of appeals regarding the question presented in the petition for certiorari.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statutory and regulatory provisions involved	2
Statement	3
A. The statutory framework	4
B. The DEFRA amendments	6
C. The proceedings in this case	7
Summary of argument	10
Argument:	
The AFDC disregard for "child support payments" does not apply to Social Security child's insurance benefits	12
A. As used in the Social Security Act, the term "child support" does not include Social Security payments	13
B. The legislative history of the $50 disregard supports the conclusion that the term "child support payments" does not include Social Security benefits	18
C. The Secretary's determination that the term "child support payments" refers only to payments from absent parents is entitled to deference	22
D. Excluding Social Security "child's insurance benefits" from the "child support" disregard does not raise constitutional problems	30
Conclusion	31

TABLE OF AUTHORITIES

Cases: Page

Allen v. *Grand Central Aircraft Co.*, 347 U.S. 535 (1954) 25
Bowen v. *Gilliard*, 483 U.S. 587 (1987) 6, 8, 12, 24, 25, 26, 30
Califano v. *Goldfarb*, 430 U.S. 199 (1977) 5
Califano v. *Jobst*, 434 U.S. 47 (1977) 5, 15, 28
Chemical Manufacturers Ass'n v. *NRDC*, 470 U.S. 116 (1985) 22
Chevron U.S.A. Inc. v. *NRDC*, 467 U.S. 837 (1984) 22
Dandridge v. *Williams*, 397 U.S. 471 (1970) 30
Erlenbaugh v. *United States*, 409 U.S. 239 (1972) .. 13, 22
Ford Motor Credit Co. v. *Milhollin*, 444 U.S. 555 (1980) 9
Georgia Department of Human Resources, Doc. No. 88-40, Dec. No. 995 (Nov. 4, 1988) 24
Heckler v. *Turner*, 470 U.S. 184 (1985) 4, 16
Hicks v. *Feiock*, 108 S. Ct. 1423 (1988) 26
Hisquierdo v. *Hisquierdo*, 439 U.S. 572 (1979) 14
Hopkins v. *Cohen*, 390 U.S. 530 (1968) 28
International Ass'n of Machinists v. *Street*, 367 U.S. 740 (1961) 31
King v. *Smith*, 392 U.S. 309 (1968) 4, 13
Lewis v. *Martin*, 397 U.S. 552 (1970) 22
Mathews v. *Lucas*, 427 U.S. 495 (1976) 15
New York Dep't of Social Services v. *Dublino*, 413 U.S. 405 (1973) 22
Quern v. *Mandley*, 436 U.S. 725 (1975) 22
Rosado v. *Wyman*, 397 U.S. 397 (1970) 22
Shea v. *Vialpando*, 416 U.S. 251 (1974) 4
Sorenson v. *Secretary of the Treasury*, 475 U.S. 851 (1986) 10, 13
South Carolina v. *Regan*, 465 U.S. 367 (1984) 16
Todd v. *Norman*, 840 F.2d 608 (8th Cir. 1988) 9, 20, 21, 28, 29

Cases—Continued: Page

United States v. *Morton*, 467 U.S. 822 (1984) 14
United States v. *Price*, 361 U.S. 304 (1960) 16
United States v. *Stewart*, 311 U.S. 60 (1940) 22
Wilcox v. *Ives*, 864 F.2d 915 (1st Cir. 1988) 16
Xerox Corp. v. *County of Harris*, 459 U.S. 145 (1982) 25
Young v. *Community Nutrition Institute*, 476 U.S. 974 (1986) 22

Statutes, regulations and rule:

Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 21
98 Stat. 1307-1308 21
98 Stat. 1312-1314 21
98 Stat. 1320-1321 21
98 Stat. 1329 (§ 23(a)) 21, 26, 30
Deficit Reduction Act, Pub. L. No. 98-369, 98 Stat. 494 6
§ 2640, 98 Stat. 1145 ..... 6, 15
§ 2640(a), 98 Stat. 1145 ..... 6, 15
§ 2640(a)-(c), 98 Stat. 1145-1146 6
§ 2640(b), 98 Stat. 1145-1146 ..... 2, 6
§ 2640(c), 98 Stat. 1146 .....2, 6, 15
Department of Education Organization Act, Pub. L. No. 96-88, Tit. V, § 509(b), 93 Stat. 695 22
Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343:
§ 101, 102 Stat. 2344 17
§ 102(a), 102 Stat. 2346 (to be codified at 42 U.S.C. 602(a)(8)(A)(vi)) 2, 15
§ 102(b), 102 Stat. 2346 (to be codified at 42 U.S.C. 657(b)(1)) 3, 17
§ 101, 102 Stat. 2344-2345 17
§ 103, 102 Stat. 2346-2348 17
§ 111-112, 102 Stat. 2348-2350 17

Statutes, regulations and rule—Continued:	Page
§ 121, 102 Stat. 2351	17
§ 121(a), 102 Stat. 2351	17
§§ 121-129, 102 Stat. 2351-2356	17
§ 126, 102 Stat. 2354	17
§ 129, 102 Stat. 2356	17
Social Security Act, ch. 531, Tit. IV, 49 Stat. 627 (1935)	18
Social Security Act:	
Tit. II, 42 U.S.C. 401 *et seq.*	5
42 U.S.C. 402(d) (1982 & Supp. V 1987)	3, 5
42 U.S.C. 402(d)(1)	5, 28
42 U.S.C. 402(d)(2)	28
42 U.S.C. 402(d)(3)	5
42 U.S.C. 402(d)(4)	5, 15
42 U.S.C. 402(d)(8)	15
42 U.S.C. 405(j) (Supp. V 1987)	6
Tit. IV, 42 U.S.C. 601 *et seq.*	4
42 U.S.C. 601-676	13
42 U.S.C. 602(a)(7)(A) (1982 & Supp. V 1987)	3, 4
42 U.S.C. 602(a)(8) (Supp. V 1987)	4
42 U.S.C. 602(a)(8)(A)(vi) (Supp. V 1987)	2
42 U.S.C. 602(a)(26)(A) (1982 & Supp. V 1987)	19
42 U.S.C. 602(a)(26)(B)	14, 19
42 U.S.C. 602(a)(27)	13
42 U.S.C. 602(a)(28)	13
42 U.S.C. 602(a)(31)(D)	13
42 U.S.C. 602(a)(38) (Supp. III 1985)	6
42 U.S.C. 602 note	20
42 U.S.C. 603(b)(2)(C)	13
42 U.S.C. 606(a)	4
42 U.S.C. 607(a)	4
42 U.S.C. 608(a)(8)(A)(vi) (Supp. V 1987)	6, 12

Statutes, regulations and rule—Continued:	Page
42 U.S.C. 651 *et seq.*	19
42 U.S.C. 651	14
42 U.S.C. 651-669	14
42 U.S.C. 652	14
42 U.S.C. 652(a)(1)	13
42 U.S.C. 652(a)(7)	13
42 U.S.C. 652(a)(10)(B)	13
42 U.S.C. 652(a)(10)(C)	13
42 U.S.C. 652(b)	13
42 U.S.C. 653	14
42 U.S.C. 653(a)	14
42 U.S.C. 653(c)(1)	14
42 U.S.C. 654(4)(B)	17
42 U.S.C. 654	14
42 U.S.C. 654(5)	14
42 U.S.C. 654(6)	14
42 U.S.C. 654(19)(A)	14
42 U.S.C. 654(19)(B)	14
42 U.S.C. 656(b)	14
42 U.S.C. 657	18
42 U.S.C. 657(a)	14
42 U.S.C. 657(a)(1)	20
42 U.S.C. 657(b)	12, 17, 18
42 U.S.C. 657(b)(1) (Supp. V 1987)	2, 6
42 U.S.C. 659	14
42 U.S.C. 659(a)	14
42 U.S.C. 659(d)	14
42 U.S.C. 660	14
42 U.S.C. 661(b)(3)	14
42 U.S.C. 662(b)	14
42 U.S.C. 666	17
42 U.S.C. 667	17
Social Security Act Amendments of 1939, ch. 666 § 201, 53 Stat. 1364-1366	5
Social Security Act Amendments of 1950, ch. 809, § 321(b), 64 Stat. 550	18

Statutes, regulations and rule – Continued: Page

Social Security Amendments of 1967, Pub. L. No. 90-248, § 201(a)(1)(B), 81 Stat. 878-879 (1968) .. 19

Social Security Amendments of 1974, Pub. L. No. 93-647, § 101(a), 88 Stat. 2351 (1975):
- 88 Stat. 2359 ..... 19, 20
- 88 Stat. 2351-2358 19
- 88 Stat. 2351-2360 20
- 88 Stat. 2356-2357 20
- 88 Stat. 2359-2360 19

Spending Reduction Act of 1984, Pub. L. No. 98-369, § 2001, 98 Stat. 1057 6

Tax Reform Act of 1984, Pub. L. No. 98-369, § 5, 98 Stat. 494 6

20 U.S.C. 3508(b) 22

45 C.F.R.:
- Section 223.20(a)(3)(v) 18
- Section 232.20(a) 3, 7, 23
- Section 232.20(d) 3, 16
- Section 233.20(a)(4)(ii)(j) 23
- Section 302.32 16
- Section 302.31(a)(3) 18
- Section 302.51(b) 16
- Section 302.51(b)(1) 3, 7, 16, 23
- Section 303.80 18
- Section 305.51(b)(1) 7

Sup. Ct. R. 12.4 7

Miscellaneous:

Annotation, *Right To Credit On Child Support Payments For Social Security Or Other Government Dependency Payments Made For Benefit of Child*, 77 A.L.R.3d 1315 (1977 & Supp. 1989) ... 29

Black's Law Dictionary (5th ed. 1979) 13

134 Cong. Rec. S57,651 (daily ed. June 13, 1988) .. 30

Miscellaneous – Continued: Page

49 Fed. Reg. (1984):
- pp. 35,586-35,606 ..... 7, 23
- pp. 35,588-35,589 7
- pp. 35,589-35,590 23
- p. 35,590 23
- p. 35,599 7
- p. 35,600 23
- p. 35,604-35,605 23
- p. 35,605 23
- pp. 35,605-35,606 7

50 Fed. Reg. (1985):
- p. 19,620 7
- p. 19,642 7
- p. 34,693 23
- pp. 34,693-34,697 7

53 Fed. Reg. (1988):
- p. 21,642 7
- p. 21,643 ..... 7, 23, 24
- p. 21,644 ..... 7, 23

54 Fed. Reg. 32,308-32,309 (1989) 16

H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. (1984) 20, 21

H.R. Conf. Rep. No. 925, 98th Cong., 2d Sess. (1984) 21

H.R. Conf. Rep. No. 998, 100th Cong., 2d Sess. (1988) 16

H.R. Rep. No. 544, 90th Cong., 1st Sess. (1967) .. 19

H.R. Rep. No. 159, 100th Cong., 1st Sess. (1987) .. 16, 26

H. Krause, *Child Support in America* (1981) 28

1 Senate Comm. on Finance, S. Prt. 98-169, 98th Cong., 2d Sess., *Deficit Reduction Act of 1984* (Comm. Print 1984) 20, 21, 26

S. Rep. No. 377, 100th Cong., 2d Sess. (1988) 16

S. Rep. No. 1356, 93rd Cong., 2d Sess. (1974) 19, 25

Miscellaneous – Continued: Page

S. Rep. No. 1356, 93d Cong., 2d Sess. (1974) 20

Staff of House Comm. on Ways and Means, 101st Cong., 1st Sess., WMCP: 101-4, *Background Material and Data on Programs Within The Jurisdiction of The Committee On Ways and Means* (Comm. Print 1989) 5

In the Supreme Court of the United States

OCTOBER TERM, 1989

No. 89-535

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 870 F.2d 969. The opinions of the district court (Pet. App. 14a-22a, 23a-27a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 28, 1989. A petition for rehearing with suggestion for rehearing en banc was denied on May 31, 1989 (Pet. App. 31a-34a). On August 25, 1989, Chief Justice Rehnquist extended the time for filing a petition for writ of certiorari to September 28, 1989. The petition for a writ of certiorari was filed on that date, and was granted on January 8, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 402(a)(8)(A)(vi) of the Social Security Act (42 U.S.C. 602(a)(8)(A)(vi) (Supp. V 1987), as it was passed in 1984 (Deficit Reduction Act of 1984 (DEFRA), Pub. L. No. 98-369, § 2640(c), 98 Stat. 1146), provided:

> [I]n making the [AFDC eligibility and assistance] determination under paragraph (7), the State agency
>
> • • • • •
>
> (vi) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title).

In 1988, Congress amended this provision (Family Support Act of 1988, Pub. L. No. 100-485, § 102(a), 102 Stat. 2346). The current version (to be codified at 42 U.S.C. 602(a)(8)(A)(vi)) provides:

> [I]n making the [AFDC eligibility and assistance] determination under paragraph (7), the State agency
>
> • • • • •
>
> (vi) shall disregard the first $50 of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due, with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title).

Section 457(b)(1) of the Social Security Act (42 U.S.C. 657(b)(1) (Supp. V 1987), as it was passed in 1984 (Pub. L. No. 98-369, § 2460(b), 98 Stat. 1145), provided:

> (b) • • •
>
> The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall • • • be distributed as follows:
>
> (1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

In 1988, Congress also amended this provision (Pub. L. No. 100-485, § 102(b), 102 Stat. 2346). The current version (to be codified at 42 U.S.C. 657(b)(1)) provides:

> (b) • • •
>
> The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall • • • be distributed as follows:
>
> (1) of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family such month;

Social Security Act Sections 402(a)(7)(A) and 202(d) (42 U.S.C. 602(a)(7)(A) (1982 & Supp. V 1987) and 42 U.S.C. 402(d) (1982 & Supp. V 1987)) are set forth in the appendix to the petition (at 35a, 37a-40a). HHS regulations 45 C.F.R. 232.20(a) and (d) and 302.51(b)(1) are also set forth in the appendix to the petition (at 40a-41a).

STATEMENT

This case concerns the scope of the $50 per month disregard for "child support payments" that Congress has required in

eligibility and assistance determinations under the AFDC program.

A. The Statutory Framework

1. The AFDC program, set forth in Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a product of "cooperative federalism" (*King* v. *Smith*, 392 U.S. 309, 316 (1968)) by federal and state governments to provide financial and other assistance on behalf of certain dependent children. For purposes of the AFDC program, a "dependent child" is a needy child who has been deprived of parental care or support by a parent's death, incapacity, or continued absence from the home (42 U.S.C. 606(a)); a "dependent child" may also be a needy child who has been deprived of parental care or support by the unemployment of the parent who is the principal wage earner (42 U.S.C. 607(a)).

State participation in the AFDC program is not mandatory, but participating States must follow all applicable federal requirements. The program "is financed in large measure by the Federal Government on a matching-fund basis, and participating States must submit AFDC plans in conformity with the Act and the regulations promulgated thereunder" (*Shea* v. *Vialpando*, 416 U.S. 251, 253 (1974)) by the Secretary of Health and Human Services (HHS). States administer the program and determine the standard of need and level of benefits. *Heckler* v. *Turner*, 470 U.S. 184, 189 n.3 (1985). Among the federal requirements are statutory provisions directing the States to consider all income and resources available to the recipient family before determining the need-based amount of AFDC assistance (42 U.S.C. 602(a)(7) (1982 & Supp. V 1987)), and provisions specifying various categories of income and resources that are to be "disregard[ed]" in making the determination of an applicant's eligibility and assistance level (42 U.S.C. 602(a)(8) (Supp. V 1987)).

2. Social Security payments known as "child's insurance benefits" are provided as part of the Old Age, Survivors and Disability Insurance (OASDI) program, set forth in Title II of

the Social Security Act (42 U.S.C. 401 *et seq.*). Child's insurance benefits are available to children if a child's parent was an insured wage earner under the Social Security Act and the insured wage earner has died, become disabled, or retired. 42 U.S.C. 402(d) (1982 & Supp. V 1987). The benefits are paid entirely by the federal government. The largest category of current recipients of child's insurance benefits is children of deceased parents; more than 1.8 million of the almost 3.2 million children receiving child's insurance benefits in 1988 received the payments because an insured parent had died.[1]

Child's insurance benefits were initially added to the Social Security Act in 1939, when benefits for wives, widows, and parents of insured wage earners were also added. Social Security Act Amendments of 1939, ch. 666, § 201, 53 Stat. 1364-1366. The addition of these secondary beneficiaries was designed to protect the dependents of an insured wage earner against the hardship of a loss of the insured's earnings. "The entitlement of any secondary beneficiary is predicated on his or her relationship to a contributing wage earner. If the statutory requirements for eligibility are met, the amount of the benefit is unrelated to the actual need of the beneficiary." *Califano* v. *Jobst*, 434 U.S. 47, 52 (1977). The statutory requirements of eligibility represent congressional determinations about likely dependency on the insured wage earner (*Califano* v. *Goldfarb*, 430 U.S. 199, 213-214 (1977) (plurality opinion)); the child's insurance benefits provision therefore sets forth various criteria for defining and "deem[ing]" a child's dependency on the insured wage earner. See, *e.g.*, 42 U.S.C. 402(d) (1), (3) and (4).

Child's insurance benefits under Title II are often payable to children who are also members of an AFDC household, including households headed by someone other than the insured parent. Such benefits, moreover, are frequently paid to the head

---

[1] Staff of House Comm. on Ways and Means, 101st Cong., 1st Sess., WMCP: 101-4, *Background Material and Data on Programs Within The Jurisdiction of The Committee On Ways and Means* 4 (Comm. Print 1989). Of the remaining 1.395 million recipients, 963,000 received child's insurance benefits because an insured parent was disabled, and 432,000 received child's insurance benefits because an insured parent was retired. *Ibid.*

of the AFDC household as the representative payee of the child receiving child's insurance benefits. 42 U.S.C. 405(j) (Supp. V 1987).

B. The DEFRA Amendments

In 1984, Congress enacted the Deficit Reduction Act of 1984, (DEFRA), Pub. L. No. 98-369, 98 Stat. 494, a massive statute filling over 700 pages of the statutes at large and including two major divisions, the Tax Reform Act of 1984 and the Spending Reduction Act of 1984. See *Bowen* v. *Gilliard*, 483 U.S. 587, 589 n.2 (1987). As part of its spending reduction provisions, DEFRA enacted several amendments to the AFDC program. Three such amendments were included in Section 2640—the family income requirement (Section 2640(a)), the pass-through provision (Section 2640(b)), and the child support disregard (Section 2640(c)). The family income requirement provided that, in making AFDC eligibility and assistance determinations, the income of a sibling or parent living in the same household should generally be included as part of the AFDC applicant family's income, subject to specified exceptions (98 Stat. 1145; 42 U.S.C. 602(a)(38) (Supp. III 1985); before that amendment, the applicant family had been able to exclude various family members from the application (and thus exclude any of the family member's income or resources). The pass-through provision specified that the first $50 per month of support payments received by the State from noncustodial parents should be passed on directly to the AFDC recipient. 98 Stat. 1145-1146; 42 U.S.C. 657(b)(1) (Supp. V 1987). The child support disregard—the provision at issue in this case—provided that the first $50 of "any child support payments," including the payments passed on to the family under the pass-through provision, should be excluded from AFDC eligibility and assistance determinations. 98 Stat. 1146; 42 U.S.C. 608(a)(8)(A)(vi) (Supp. V 1987).

The Secretary of HHS promptly promulgated regulations and provided interpretive instructions to implement various DEFRA

changes in the AFDC program. 49 Fed. Reg. 35,586-35,606 (1984). To implement the $50 per month pass-through and disregard for child support payments, the Secretary issued regulations requiring that $50 per month of child support payments received by the State from absent parents be passed through and disregarded in eligibility determinations. 49 Fed. Reg. 35,589-35,590, 35,599, 35,605-35,606 (1984); 45 C.F.R. 232.20(a) (Pet. App. 40a); 45 C.F.R. 302.51(b)(1) (Pet. App. 40a-41a).[2] The Secretary also provided that two other types of parental child support payments should receive the child support disregard—payments received directly by the family despite the assignment to the State (49 Fed. Reg. 35,590 (1984); see also 50 Fed. Reg. 34,693-34,697 (1985); 53 Fed. Reg. 21,643 (1988)) and voluntary support payments on behalf of children for whom an assignment had been made (49 Fed. Reg. 35,590 (1984); see also 53 Fed. Reg. 21,644 (1988)). However, the Secretary did not extend the $50 per month disregard to any non-parental payments, including Social Security child's insurance benefits.[3]

C. The Proceedings In This Case

1. On June 23, 1986, respondents filed a class action against the Secretary of Health and Human Services and the Commissioner of the Virginia Department of Social Services.[4] The named plaintiffs consisted of five families in which at least one child received AFDC benefits and at least one sibling received either child support payments from a noncustodial parent or child's insurance benefits—income which had been excluded

---

[2] 45 C.F.R. 232.20(a) miscites 45 C.F.R. 302.51(b)(1) as 45 C.F.R. 305.51(b)(1).

[3] The Secretary has determined that an absent parent's spousal support payments are entitled to the disregard if the absent parent's support obligations to the child and the spouse have been established, if the child and the spouse live in the same household, and if child support is being collected along with the spousal support. See 53 Fed. Reg. 21,642 (1988); 50 Fed. Reg. 19,620, 19,642 (1985).

[4] Although the Commissioner of the Virginia Department of Social Services is a respondent (Sup. Ct. R. 12.4), references in this brief to "respondents" refer to the plaintiffs.

from the AFDC eligibility and assistance determinations before the enactment of the family income requirement. Respondents challenged the family income requirement as unconstitutional and contrary to various Social Security Act provisions. J.A. 18-35.[5] After this Court's decision in *Bowen* v. *Gilliard*, 483 U.S. 587 (1987), which rejected constitutional challenges to the family income requirement in a case involving child support payments from absent parents, respondents pursued claims that the inclusion of siblings receiving Social Security child's insurance benefits in the family filing unit, and the inclusion of such benefits as income, violated provisions of the Social Security Act. Alternatively, they argued that, if the siblings were included in the family filing unit and their child's insurance benefits were included as income, exclusion of the benefits from the child support disregard violated both the Social Security Act and equal protection. J.A. 64-65; Pet. App. 17a-18a.[6]

2. On December 21, 1987, the district court (Pet. App. 14a) upheld the Secretary's inclusion of siblings receiving child's insurance benefits in the family filing unit, and the inclusion of such benefits as income under the family income requirement. *Id.* at 17a-19a. The court went on to hold, however, that, contrary to the Secretary's interpretation, the $50 per month disregard for child support payments must apply to child's insurance benefits. The court concluded that "[i]t is contradictory to treat Social Security benefits like child support for the purpose of including them in family income and then in another part of the same statute treat them differently from child support payments for the purpose of excluding a family from a potential $50 rebate." *Id.* at 19a-20a. Recognizing that the Secretary's interpretation was due "considerable deference," the court nevertheless found the Secretary's interpretation to be " 'demonstrably irrational.' " *Id.* at 18a (quoting *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 565 (1980)).[7]

3. The court of appeals (Pet. App. 1a) affirmed. It upheld the Secretary's inclusion of siblings receiving child's insurance benefits in the family filing unit (and the inclusion of the benefits as income), but rejected the Secretary's determination that the $50 per month disregard for child support payments does not include child's insurance benefits (*id.* at 8a-13a). The court stated that it "perceive[d] no distinction between support derived directly from a father's wages and support provided indirectly through Title II payments" (*id.* at 11a). The court also rejected the government's contention that limiting the disregard to payments from absent parents was consistent with a primary purpose of the disregard, as reflected in the purpose of a prior child support payment disregard adopted in 1974, of providing an incentive for cooperation by custodial parents and encouraging payments from absent parents (*id.* at 9a). The court observed that the intent of one Congress could not be inferred from another Congress, and that the AFDC context had changed so much since 1974 that the objective of the prior child support disregard was no longer applicable. The court also stated that according to *Bowen* v. *Gilliard*, the disregard had a different purpose—mitigating the hardship of the family income requirement—and that this purpose was equally applicable to child's insurance benefits. Pet. App. 9a-10a.

The court of appeals acknowledged that its decision with respect to the disregard conflicted with the Eighth Circuit's decision in *Todd* v. *Norman* 840 F.2d 608 (1988), which had upheld the Secretary's interpretation. See Pet. App. 11a. Although recognizing that the Eighth Circuit had emphasized the congres-

---

[5] On June 23, 1986 the district court entered a temporary restraining order enjoining the defendants from implementing the family income requirement in Virginia and conditionally certifying the class (J.A. 57-59); on July 2, 1986, the court extended the temporary restraining order for the duration of the litigation (J.A. 60-61); and, on November 17, 1986, the court placed the case on inactive status pending the outcome of relevant cases in the Fourth Circuit (J.A. 62).

[6] In light of *Bowen* v. *Gilliard*, respondents voluntarily dismissed their statutory and constitutional claims regarding the inclusion, in the family filing unit, of siblings receiving child support payments from absent parents. Pet. App. 14a, 28a.

[7] On March 4, 1988, the court issued an opinion denying the Secretary's motion to alter or amend the court's decision concerning the scope of the $50 per month disregard for the child support payments. Pet. App. 23a.

sional distinction between Social Security benefits and child support payments, the court found this distinction "too tenuous to support the Secretary's interpretation." *Ibid.* Noting that several States, including Virginia, allow child's insurance benefits to satisfy child support obligations, the court emphasized that child's insurance benefits and parental child support are similar because both are derived from the parent's earnings. *Id.* at 11a-12a. Finally, the court indicated that the Secretary's "unreasoned distinction raises equal protection concerns" and suggested that rejection of the Secretary's interpretation avoided doubts about its constitutionality. *Id.* at 12a.[8]

SUMMARY OF ARGUMENT

The child support disregard applies to payments from absent parents and does not include Social Security child's insurance benefits.

The term "child support" in the Social Security Act consistenly refers to payments from absent parents. "The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (internal quotation marks omitted). In contrast to the repeated use of "child support" to refer to parental payments, the Social Security Act does not use "child support" to refer to child's insurance benefits, or to any other kind of Social Security benefits. As a result of a 1988 amendment, the disregard now refers explicitly to payments by an "absent parent" and contains no indication that it is intended to have a broader scope. Both in 1984 and 1988, moreover, the disregard was enacted with a companion pass-through provision, which clearly concerns payments from absent parents.

The legislative background and history of the disregard also support the conclusion that it applies to payments from absent

[8] Although the government submitted a post-argument memorandum concerning the 1988 amendment of the disregard provision (see p. 2, *supra*), and contended that this amendment supported the Secretary's position, the court of appeals failed to discuss, or even acknowledge, the 1988 change.

parents and not to Social Security benefits. The problem of obtaining child support payments from absent parents has long been a central concern of the AFDC program. In 1974, Congress enacted the only prior child support disregard, and the legislative history stated explicitly that it was intended to produce cooperation by the custodial parent and payments from the absent parent. It is thus reasonable to conclude that the 1984 child support disregard was intended to serve the same purpose. The legislative history of the DEFRA amendments, moreover, distinguishes between child support payments and Social Security benefits as two different sources of income.

To the extent that the statute is ambiguous, the Secretary's interpretation is entitled to deference. The Secretary has reasonably concluded that the disregard should be applied to payments from absent parents and not to other payments, and that one aspect of the disregard is to encourage payments from absent parents and cooperation from custodial parents. The court of appeals rejected the Secretary's interpretation because, in its view, mitigation of hardship was the sole purpose of the disregard, child's insurance benefits are like child support payments because both are derived from a parent's earnings, and some States permit child's insurance benefits to satisfy child support obligations. Each of these reasons is flawed, and none justifies overriding the Secretary's interpretation. The mitigation-of-hardship rationale reflects a misreading of *Bowen* v. *Gilliard* and an incorrect rejection of the relevance of the only prior child support disregard. The similarity-of-payments rationale ignores important differences between child support and child's insurance benefits, including the fact that child's insurance benefits are guaranteed by the federal government. The state-law rationale similarly ignores the fact that child's insurance benefits are provided in many situations in which there is no outstanding child support obligation at all (for instance, when the insured wage earner is deceased), and that, in any event, state law treatment of child's insurance benefits varies widely.

Interpreting the child support disregard to apply to payments from absent parents and not to Social Security benefits raises no

constitutional problems. This kind of "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Bowen* v. *Gilliard*, 483 U.S. at 601 (internal quotations omitted). The incentive rationale for child support payments supplies a ready basis for justifying the distinction between parental child support payments which are paid (or not paid, as is too often the case) by absent parents and child's insurance benefits, which are paid and guaranteed by the federal government.

ARGUMENT

THE AFDC DISREGARD FOR "CHILD SUPPORT PAYMENTS" DOES NOT APPLY TO SOCIAL SECURITY CHILD'S INSURANCE BENEFITS

This case concerns the meaning of the term "child support payments" in the AFDC disregard provision, which, as passed in 1984, required state agencies to "disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under [42 U.S.C. 657(b)]." 42 U.S.C. 602(a)(8)(A)(vi) (Supp. V 1987). The question presented is whether, as the Secretary has determined, "child support payments" refers to payments from absent parents and does not include Social Security child's insurance benefits, or whether, as respondents contend and the court of appeals concluded, the term also includes Social Security child's insurance benefits.

The Secretary's determination that the disregard for "child support payments" does not include Social Security child's insurance benefits is supported by the general use and meaning of the term "child support" in the Social Security Act, and by the language and legislative history of the disregard provision. Contrary to the court of appeals' suggestion, moreover, there is nothing unreasonable about the Secretary's administrative interpretation, nor does this interpretaion pose any constitutional problem. The Secretary's common sense construction of "child support payments" should therefore be upheld.

A. As Used In The Social Security Act, The Term "Child Support" Does Not Include Social Security Payments

The Social Security Act reflects a pervasive distinction between "child support payments"—which refer to parental payments—and other types of income and resources, including child's insurance benefits.[9] "The normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning." *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860 (1986) (internal quotation marks omitted). This Court has found that rule fully applicable to the AFDC statute. See *King* v. *Smith*, 392 U.S. 309, 330 (1968) ("Our interpretation of the term 'parent' in § 406(a) is strongly supported by the way the term is used in other sections of the Act."). Given that "a legislative body generally uses a particular word with a consistent meaning in a given context" (*Erlenbaugh* v. *United States*, 409 U.S. 239, 243 (1972)), the uniform use of the term "child support payments" to refer to parental payments is powerful evidence of the meaning of the term in the disregard provision.

1. The term "child support payments" figures prominently in Title IV of the Social Security Act, and invariably refers to payments from absent parents. This statutory usage was clear at the time Congress enacted DEFRA. The 1982 version of Title IV (42 U.S.C. 601-676) contains more than twenty references to "child support" or "child and spousal support"; in every instance, the reference is to payments from absent parents, not to child's insurance or other Social Security benefits.[10] Part D of

---

[9] The statute's general usage of the term "child support" to refer to parental obligations is consistent with the dictionary definition. See *Black's Law Dictionary* 217 (5th ed. 1979) ("child support" defined as "[t]he legal obligation of parents to contribute to the economic maintenance, including education, of their children; enforceable in both civil and criminal contexts. In a dissolution or custody action, money paid by one parent to another toward the expenses of children of the marriage.").

[10] See 42 U.S.C. 602(a)(27) ("child support"); 42 U.S.C. 602 (a)(28) ("child support"); 42 U.S.C. 602(a)(31)(D) ("child support"); 42 U.S.C. 603(b)(2)(C) ("child support collections"); 42 U.S.C. 603a ("child support"); 42 U.S.C. 652(a)(1) ("child support"); 42 U.S.C. 652(a)(7) ("child and spousal support");

Title IV (42 U.S.C. 651-669) addresses a wide range of child support and paternity issues. It includes, among other things, provisions for the "Office of Child Support Enforcement" in HHS (42 U.S.C. 652); establishment of a Parent Locator Service (42 U.S.C. 653); requirements for a state plan for "child and spousal support" (42 U.S.C. 654); provisions for enforcement of an individual's legal obligation to provide "child support" or make alimony payments (42 U.S.C. 659); and a grant of authority for civil actions to enforce "child support" obligations (42 U.S.C. 660). Throughout this Title, the term "child support" has a specific meaning—the obligation of parents to support their children.[11]

In contrast to this repeated use of "child support" to refer to parental payments in Title IV, the Social Security Act does not use "child support payments" to refer to Social Security child's insurance benefits, or to any other kind of Social Security benefits. Indeed, under Title II, a child must, in certain circumstances, establish the level of a parent's previous "support" in order to qualify for the government-provided "child's insurance benefit." See, *e.g.*, 42 U.S.C. 402(d)(4) and (8). Nor does the fact that child's insurance benefits are intended to *replace* parental support after a parent has died, become disabled, or retired (*Califano* v. *Jobst*, 434 U.S. 47, 52 (1977); *Mathews* v. *Lucas*, 427 U.S. 495, 507 (1976)) mean that the child's insurance benefits themselves are encompassed in the ordinary usage of the term "child support payments." Certainly nothing in the Social Security Act—either in the AFDC or Child Support Enforcement programs under Title IV or in the "child's insurance benefits" program under Title II—indicates that the terms are interchangeable.

Likewise, the language of Section 2640 of DEFRA itself also reflects the general distinction between "child support payments" and Social Security benefits. While the disregard provision refers explicitly to "child support payments" (§ 2640(c), 98 Stat. 1146), the family income requirement includes a proviso explaining that the requirement applies "in the case of benefits provided under title II" (§ 2640(a), 98 Stat. 1145). In referring to Social Security payments under the Title II OASDI program, then, the DEFRA amendment does not use the term "child support payments." Rather, it speaks much more precisely of "benefits provided under Title II."[12]

2. In 1988, Congress amended the disregard provision in a manner that substantially supports the conclusion that "child support payments" refers to payments from absent parents. § 102(a), 102 Stat. 2346.[13] The disregard provision now requires

42 U.S.C. 652(a)(10)(B) ("Office of Child Support Enforcement"); 42 U.S.C 652(a)(10)(C) ("child support"); 42 U.S.C. 652(b) ("child support"); 42 U.S.C 653(c)(1) ("child and spousal support"); 42 U.S.C. 654 ("child and spousal support"); 42 U.S.C. 654(6) ("child support"); 42 U.S.C. 654(19)(A) ("child support"); 42 U.S.C. 654(19)(B) ("child support"); 42 U.S.C 656(b) ("child support"); 42 U.S.C. 657(a) ("child support"); 42 U.S.C. 659(a) ("child support"); 42 U.S.C. 659(b) ("child support"); 42 U.S.C. 659(d) ("child support"); 42 U.S.C. 661(b)(3) ("child support"); 42 U.S.C. 662(b) ("child support"). The 1982 version of Title IV also contains several references to "support payments" and "support obligations" that clearly refer only to payments from absent parents. See 42 U.S.C. 602(a)(26)(B) ("support payments"); 42 U.S.C. 651 ("support obligations"); 42 U.S.C. 653(a) ("support obligations"); 42 U.S.C. 654(5) ("support payments").

[11] This Court has recognized the parental child support purpose of these provisions of the Social Security Act. See, *e.g.*, *United States* v. *Morton*, 467 U.S. 822, 833 (1984) ("[T]he underlying purpose of § 659 is significant. The statute was enacted to remedy the plight of persons left destitute because they had no speedy and efficacious means of ensuring that their child support and alimony would be paid."); *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 587 n.20 (1979) ("Section 459 [42 U.S.C. 659], added to the Social Security Act in 1975, * * * was part of a package of measures primarily designed to combat increases in welfare payments resulting from an inability to compel payment of support obligations from solvent but unwilling parents.").

[12] In a similar fashion, respondents' complaint itself did not use "child support payments" to refer to Social Security child's insurance benefits. See J.A. 19 ("child support payments or Social Security benefits"); J.A. 21 ("child support or Social Security income"); *ibid.* ("Social Security or child support payments"); J.A. 31 ("child support or Social Security benefits"); J.A. 32 ("child support or OASDI benefits"); *ibid.* ("child support and OASDI payments"); *ibid.* ("child suppport or OASDI benefits"); J.A. 34 ("child support or OASDI income"); *ibid.* ("child support or OASDI income").

[13] Because the relief ordered by the district court in this case is prospective, the amended disregard is directly applicable to the judgment under review. Consideration of the 1988 amendment would be appropriate, however, even if

that the state agency "shall disregard the first $50 of any child support payments for such month received in that month" and "the first $50 of child support payments for such month received in that month if such payments were made *by the absent parent* in the month when due." *Ibid.* (emphasis added).[14] The amended disregard thus explicitly refers to "child support payments" from "absent parents," and includes no language to suggest that "child support payments" is intended to have a broader scope.[15]

the relief were not prospective and the question was solely the interpretation of the disregard provision passed in 1984. Although subsequent congressional statements about prior congressional enactments pose special problems of analysis and interpretation (see *United States* v. *Price*, 361 U.S. 304 (1960)), subsequent congressional enactments may carry "considerable retrospective weight." *Heckler* v. *Turner*, 470 U.S. 184, 211 (1985). See also *South Carolina* v. *Regan*, 465 U.S. 367, 378-379 n.17 (1984).

The 1988 amendment was brought to the attention of the court of appeals before its decision in this case in a post-argument memorandum (and in the petition for rehearing), but the court did not address it.

[14] The amendment clarifies the disregard and pass-through treatment of payments received in a different month from the month in which they were paid, and provides that the disregard applies to timely payments by absent parents even if the payments are received in a subsequent month. H.R. Conf. Rep. No. 998, 100th Cong., 2d Sess. 98 (1988). Both the House and Senate Committee reports stated that the change was intended as a clarification. H.R. Rep. No. 159, 100th Cong., 1st Sess. 73 (1987); S. Rep. No. 377, 100th Cong., 2d Sess. 17 (1988). The Senate Committee report noted that the Committee viewed the amendment as reflecting "the original intent" (S. Rep. No. 377 *supra*, at 17), that "differences of interpretation may exist" (*ibid.*), and that "[t]he Committee does no intend that an inference should be drawn from the enactment of this provision or its effective date as to the meaning of the law as previously in effect" (*ibid.*). The Senate report's reference to differences in interpretation apparently refers to a dispute over the applicability of the disregard to late parental child support payments. See, *e.g.*, *Wilcox* v. *Ives*, 864 F.2d 915, 926 (1st Cir. 1988) (finding 45 C.F.R. 302.51(b)(1) "invalid" because it prohibited pass-through for multiple payments); 864 F.2d at 926 (Breyer, J., concurring) (noting that "Congress has recently enacted legislation that, for the future, adopts the Secretary's view"). In the wake of the amendments, 45 C.F.R. 232.20(d), 302.32, and 302.51(b) have been amended, effective October 1, 1990, to add new deadlines governing the State's treatment of the pass-through. See 54 Fed. Reg. 32,308-32,309 (1989).

[15] The pass-through provision was also amended to conform with the amendment in the disregard provision, and the amended pass-through provi-

The 1988 amendment, moreover, is a part of a statute—the Family Support Act of 1988—that contains many other sections addressing the problem of "child support." Once again, all of the other provisions using the term "child support" clearly use that term in the context of payments from absent parents.[16]

3. Finally, the child support disregard provision must be read in pari materia with the pass-through provision. The pass-through provision clearly involves payments from absent parents; it applies to payments collected and received by the state child support enforcement agency, and that agency collects child and spousal support payments from absent parents. See 42 U.S.C. 654(4)(B); 42 U.S.C. 657(b). Because the provisions

sion similarly refers to payments "made by the absent parent in the month when due." § 102(b), 102 Stat. 2346; see p. 3, *supra*.

[16] Title I of the Act, which includes the amendment of the child support disregard and the pass-through, is entitled "CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY." § 101, 102 Stat. 2344. Subtitle A (which contains the disregard and the pass-through amendments) addresses "Child Support" (§§ 101-104, 102 Stat. 2344-2348); Subtitle B addresses "Establishment of Paternity" (§§ 111-112, 102 Stat. 2348-2350); and Subtitle C addresses "Improved Procedures for Child Support Enforcement and Establishment of Paternity" (§§ 121-129, 102 Stat. 2351-2356). Various individual provisions, besides the amendment of the disregard and pass-through provisions (§ 102), similarly reveal the use of "child support" to refer to payments from absent parents. See, *e.g.*, § 101, 102 Stat. 2344-2345 (amending 42 U.S.C. 666 to enhance procedures for withholding the "wages of an absent parent" in enforcing "child support orders"); § 103, 102 Stat. 2346-2348 (amending 42 U.S.C. 667 to provide state guidelines for evaluating "child support" awards and "child support" orders; referring to the state "child support enforcement agency"); § 121, 102 Stat. 2351 (referring to "requests to locate absent parents, establish paternity, and initiate proceedings to establish and collect child support awards"); § 122, 102 Stat. 2351 (referring to the "amounts collected as child support pursuant to the State's plan"); § 126, 102 Stat. 2354 (establishing a "Commission on Interstate Child Support" to improve "the interstate establishment and enforcement of child support awards"); § 129, 102 Stat. 2356 (requiring additional statistics regarding various "child support" issues, including "location of an absent parent for the purpose of establishing a child support obligation" and "location of an absent parent for the purpose of enforcing or modifying an established child support obligation"). The legislation also gave the Secretary additional responsibilities for issuing standards to guide state child support enforcement programs. See § 121(a), 102 Stat. 2351.

were enacted together in 1984 (and re-enacted with amendments in 1988) it is reasonable to conclude that both address the same kind of child support payments—payments from absent parents.

Moreover, the fact that the child support disregard has a parenthetical reference to the pass-through provisions—"(including support payments collected and paid to the family under section 657(b) of this title [42 U.S.C. 657(b)])"—does not support a conclusion that the term "any child support payments" should be interpreted to refer to Social Security benefits. Some parental child support payments are not received directly by the family, and the AFDC and Child Support Enforcement programs have specific regulations to address the treatment of such payments. See 45 C.F.R. 233.20(a)(3)(v), 302.31(a)(3), 303.80. Thus, the fact that the term "any child support payments" in the disregard "include[s]" parental payments collected by the State pursuant to 42 U.S.C. 657 is entirely consistent with a view that the term applies only to parental child support payments. The parenthetical provides no basis for concluding that the term "child support payments" in the disregard provision has a different meaning than it has in other Social Security Act provisions.

B. The Legislative History Of The $50 Disregard Supports The Conclusion That The Term "Child Support Payments" Does Not Include Social Security Benefits

The legislative background of the disregard provision also suggests that "child support payments" should be interpreted to refer to payments from absent parents.

The prevalence of non-support by absent parents has long been recognized as a central problem of the AFDC program. As early as 1950, only fifteen years after the initial passage of the program (Social Security Act, ch. 531, Tit. IV, 49 Stat. 627 (1935)), Congress included in the AFDC statute a requirement that States "provide for prompt notice to appropriate law-enforcement officials of the furnishing of aid to dependent children in respect of a child who has been deserted or abandoned by a parent." Social Security Act Amendments of 1950, ch. 809, § 321(b), 64 Stat. 550. In 1967, the House Ways and Means Committee reported that the existing "provision has not been broad enough to accomplish objectives which the committee believes are essential—securing support from the deserting or abandoning parent in every possible case." H.R. Rep. No. 544, 90th Cong., 1st Sess. 100 (1967). In response to that concern, in the Social Security Amendments of 1967, Congress enacted a number of amendments to the AFDC program; one of these amendments required that the State, "in the case of any child receiving such aid who has been deserted or abandoned by his parent, * * * secure support for such child from such parent (or from any other person legally liable for such support)." Pub. L. No. 90-248, § 291(a)(1)(B), 81 Stat. 878-879 (1968).

In 1974, Congress concluded that "[t]he problem of welfare in the United States is, to a considerable extent, a problem of the non-support of children by their absent parents" (S. Rep. No. 1356, 93d Cong., 2d Sess. 42 (1974)). Accordingly, Congress determined that further changes in the AFDC program were necessary. Social Services Amendments of 1974, Pub. L. No. 93-647 (1975), 88 Stat. 2351-2360. The changes required the assignment of child support payments to the State for collection and enforcement (88 Stat. 2359; 42 U.S.C. 602(a)(26)(A) (1982 & Supp. V 1987)). The changes also required, as a condition of AFDC eligibility, that a recipient assist in establishing the paternity of a child with respect to whom aid was claimed, and in obtaining support payments from the absent parent (88 Stat. 2359-2360; 42 U.S.C. 602(a)(26)(B) (1982 & Supp. V 1987)). Most comprehensively, Congress added an entire new part—Part D—to Title IV of the Social Security Act to address various child support and paternity issues, including procedures and requirements for the state administration of the new child support and collection responsibility in the AFDC program (88 Stat. 2351-2358; 42 U.S.C. 651 *et seq.*).

The 1974 amendments also required, for a fifteen-month period begining in July, 1975, that 40% of the first $50 per month of child support payments collected by the State pur-

suant to the assignment of child support rights would be passed through to the AFDC family and disregarded in AFDC eligibility and assistance determinations. (88 Stat. 2356-2357, 2359; 42 U.S.C. 657(a)(1), 42 U.S.C. 602 note at 815). The stated purpose of this disregard was to encourage cooperation by the custodial parent in obtaining child support payments from the absent parent; the disregard would give "the mother a financial incentive to cooperate" and would ensure that "the family would always be better off if support payments are made by the absent parent." S. Rep. No. 1356, 93d Cong., 2d Sess. 52 (1974).

As the Eighth Circuit concluded in *Todd* v. *Norman* (840 F.2d at 610-611), it is reasonable to assume that the DEFRA disregard provision has a similar purpose. To be sure, the sparse legislative history of DEFRA does not explicitly advert to the purpose of the disregard,[17] but both the 1974 disregard and its 1984 counterpart appear in the context of provisions regarding the payment and collection of child support obligations, and both employ a benchmark of $50 per month. These similarities suggest that, as in the 1974 Amendments, "[t]he problem addressed by the child support disregard is the collection of child support from absent parents. Child's Insurance Benefits simply are not part of that problem." *Todd* v. *Norman*, 840 F.2d at 612.

Other aspects of the legislative history of DEFRA amendments (and the child support disregard) also support the Secretary's interpretation. The Senate report explaining the family income requirement refers to "social security or child support payments." See 1 Senate Comm. on Finance, S. Prt. 98-169, 98th Cong., 2d Sess., *Deficit Reduction Act of 1984*, at 980 (Comm. Print 1984) (family unit rule intended to end practice by which "a family might choose to exclude a child who is

[17] The family income requirement was added to DEFRA by the Senate. The disregard and pass-through provisions were then added to the bill in conference; the explanation in the legislative history is brief and summary. See H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1407 (1984) ("The conference agreement follows the Senate amendment with the following modification: a[] monthly disregard of $50 of child support received by a family is established. The disregard is applied at eligibility determination and benefit calculation.").

receiving social security or child support payments, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child"). As the Eighth Circuit concluded, this explanation suggests congressional treatment of " 'Social Security benefits' and 'child support' as separate and distinct sources of income." *Todd* v. *Norman*, 840 F.2d at 611.[18]

Moreover, the DEFRA amendments were passed contemporaneously with the Child Support Enforcement Amendments of 1984, Pub. L. 98-378, 98 Stat. 1305. DEFRA was enacted on July 18, 1984 (98 Stat. 1210); the Child Support Enforcement Amendments were enacted on August 16, 1984 (98 Stat. 1330). The same committees were responsible for both pieces of legislation (the House Ways and Means Committee and the Senate Finance Committee). The Child Support Enforcement Amendments of 1984, which extensively amended Part D of Title IV, added a variety of tools for enhancing child support enforcement—including mandatory income withholding (98 Stat., 1307-1308); enhanced incentive payments to States (98 Stat. 1312-1314); and state commissions on child support (98 Stat. 1320-1321)—and consistently used the term "child support" to refer to payments from absent parents. As the Conference Report summarizes, the purpose of the Child Support Enforcement Amendments was "to assure * * * that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances." H.R. Conf. Rep. No. 925, 98th Cong., 2d Sess. 1 (1984).[19] Given the focus in this contemporaneously enacted statute on strengthening incentives for child support en-

[18] The discussion of other DEFRA provisons in the legislative history also reflects this distinction. See, *e.g.*, 1 Senate Comm. on Finance, *supra*, at 984 (referring to Title II benefits as "OASDI benefits"); *id.* at 985 (referring to a "child support order" and the obligations of an "absent parent"). See also H.R. Conf. Rep. No. 861, *supra*, at 1391, 1409 (discussing same provisions and using same terminology).

[19] See also § 23(a), 98 Stat. 1329, ("The Congress finds that * * * there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program.").

forcement, it is reasonable to assume that the adoption of the $50 disregard for "child support payments" as part of DEFRA had a similar purpose. See *Erlenbaugh* v. *United States*, 409 U.S. 239, 244 (1972); *United States* v. *Stewart*, 311 U.S. 60, 64 (1940).

C. The Secretary's Determination That The Term "Child Support Payments" Refers Only To Payments From Absent Parents Is Entitled To Deference

Even if the meaning of the term in the statute were unclear, the Secretary's interpretation is entitled to deference. "[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 843 (1984).[20] Consistent with this principle, this Court has repeatedly emphasized that the agency charged with administering the complex AFDC legislation is entitled to deference in its interpretation of the statute.[21] The court of appeals concluded that "Congress has offered no answer to this question" (Pet. App. 8a-9a); if this were true, the appropriate response should have been to defer to the

[20] See also *Young* v. *Community Nutrition Institute*, 476 U.S. 974, 980-981 (1986); *Chemical Manufacturers Ass'n* v. *NRDC*, 470 U.S. 116, 125 (1985).

[21] See *Quern* v. *Mandley*, 436 U.S. 725, 738 (1978) (HEW's interpretation of AFDC provision, as "[t]he interpretation of the agency charged with administration of the statute is, of course, entitled to substantial deference"); *New York Dep't of Social Services* v. *Dublino*, 413 U.S. 405, 420 (1973) (deferring to HEW as "the agency of Government responsible for administering the Federal Social Security Act—including reviewing of state AFDC programs"); *Lewis* v. *Martin*, 397 U.S. 552, 559 (1970) ("We give HEW the difference due the agency charged with the administration of the [Social Security] Act" in AFDC case); *Rosado* v. *Wyman*, 397 U.S. 397, 415 (1970) (HEW's construction of AFDC provision "is entitled to weight as the attempt of an experienced agency to harmonize an obscure enactment with the basic structure of a program it administers"). In 1979, the Department of Health and Human Services replaced the Department of Health, Education and Welfare (HEW) as the federal agency responsible for administering the AFDC program. Department of Education Organization Act, Pub. L. No. 96-88, Tit. V, § 509(b), 93 Stat. 695; 20 U.S.C. 3508(b).

interpretive answer provided by the agency charged by Congress with the administration of the AFDC program.

In response to DEFRA, the Secretary promulgated regulations and provided interpretive instructions to implement changes in the AFDC program. 49 Fed. Reg. 35,586-35,606 (1984). The Secretary established a procedure for state agencies to follow in forwarding the first $50 of parental support payments to a family (45 C.F.R 302.51(b)(1); Pet. App. 40a-41a), and required that $50 per month of the child support collections be excluded from AFDC eligibility determinations (45 C.F.R. 232.20(a) and (b); Pet. App. 40a). The Secretary also required disregarding the first $50 of child support payments made directly to the family from absent parents, and the first $50 of voluntary support payments on behalf of children for whom an assignment had been made. 49 Fed. Reg. 35,590 (1984). See also 50 Fed. Reg. 34,693 (1985); 53 Fed. Reg. 21,643, 21,644 (1988).[22] The Secretary did not, however, apply the $50 disregard to any form of payments other than parental support payments, such as child's insurance benefits. See 49 Fed. Reg. 35,589-35,590; 35,604-35,605 (1984).[23] The Secretary has referred to the example of the prior disregard (49 Fed. Reg. 35,605 (1984)), and has concluded that a purpose of the current

[22] One of the regulations adopted by the Secretary—45 C.F.R. 233.20(a)(4)(ii)(j), promulgated at 49 Fed. Reg. 35,600 (1984) (specifying that various child support payments from absent parents should be disregarded in assistance determinations)—does not appear in the Code of Federal Regulations; instead, 45 C.F.R. 233.20(a)(4)(ii)(j) now states, "[Reserved]." This anomaly came about because it was anticipated that an unrelated rule (see 49 Fed. Reg. 48,550 (1984)) would be published before the DEFRA regulation; that unrelated rule had been intended to "reserve" 45 C.F.R. 233.20(a)(4)(ii)(j) for the DEFRA regulation and thus included only the word "[Reserved]" after that citation. Contrary to expectation, however, the unrelated rule was actually published *after* the DEFRA regulation had been promulgated; the unrelated rule thus substituted "[Reserved]" for the language of the DEFRA regulation. Consequently, the text of the DEFRA regulation promulgated by the Secretary in September, 1984 was inadvertently deleted in December, 1984 by the promulgation of the unrelated rule.

[23] See also note 3, *supra* (explaining circumstances in which an absent parent's spousal support may receive the disregard).

disregard is to provide incentives for cooperation by the custodial parent and payment from the non-custodial parent (53 Fed. Reg. 21,643 (1988)).[24] The Secretary has thus interpreted DEFRA and has determined that the child support disregard applies only to parental child support payments.

Notwithstanding the ordinary deference accorded to the interpretation of the agency charged with interpreting and administering a complex statute, the court of appeals concluded that the Secretary's interpretation of the scope of the disregard was irrational for three asserted reasons: (1) the purpose of the disregard was solely to mitigate the hardship produced by the DEFRA amendments, and this purpose precludes differential treatment of child's insurance benefits; (2) child's insurance benefits are derived from a parent's earnings and thus should be treated like child support payments; and (3) some States permit child's insurance benefits to satisfy child support obligations and therefore child's insurance benefits should receive the same disregard as child support payments. None of these assertions provides a basis for overriding the Secretary's interpretation.

1. In concluding that the purpose of the disregard was exclusively to mitigate hardship—and that the Secretary's interpretation of the scope of the disregard must therefore be rejected—the court of appeals placed extensive reliance on a statement in this Court's opinion in *Bowen* v. *Gilliard*. Pet. App. 10a.[25] But nothing in *Bowen* v. *Gilliard* suggests that mitigating

[24] The HHS Departmental Appeals Board has also noted the Department's view of the incentive purpose for the disregard, and upheld the exclusion of child's insurance benefits from the disregard. See *Georgia Department of Human Resources*, Doc. No. 88-40, Dec. No. 995, at 7, 16 (Nov. 4, 1988). Copies of the decision have been provided to respondents and lodged with the Clerk of the Court.

[25] The court of appeals (Pet. App. 10a n.3) quoted this statement form *Bowen* v. *Gilliard:* "Because the 1984 amendments forced families to include in the filing unit children for whom support payments were being received, the practical effect was that many families' total income was reduced. The burden of the change was mitigated somewhat by a separate amendment providing that the first $50 of child support collected by the State must be remitted to the family and not counted as income for the purpose of determining its benefit level." 483 U.S. at 594 (footnotes omitted).

hardship is the sole purpose of the disregard, and nothing in that opinion is inconsistent with a view that one object of the disregard was to encourage child support payments from non-custodial parents. The payments involved in *Gilliard* were child support payments from noncustodial parents (483 U.S. at 589-590), and thus this Court had no occasion to consider possible differences between those payments and child's insurance benfits. The passage quoted by the court of appeals described the operation of the disregard in the context before the Court; it clearly was not a holding about the sole purpose of the disregard, or its scope.

In concluding that the disregard's purpose was solely to mitigate hardship, the court of appeals also rejected the relevance of the only prior child support disregard—which clearly was intended to act as an "incentive" for cooperation by the custodial parent and ensure that "the family would always be better off if support payments are made by the absent parent". S. Rep. No. 1356, 93d Cong., 2d Sess. 52 (1974). The court stated that "the intent of one Congress cannot be inferred from the activities of another Congress." Pet. App. 9a. However, the meaning of a prior statute is often relevant to successor statutes on the same subject.[26] Particularly when Congress enacts a massive omnibus statute like DEFRA, and adopts provisions which are patterned after earlier enactments, it is reasonable to assume, absent some indication to the contrary, that the new provision is designed to further the same purpose as its forerunner. This is especially true where the proposition involves a highly specialized subject matter—such as the meaning of an AFDC disregard for child support payments.

Moreover, the court of appeals erroneously concluded that the situation confronting Congress in 1974 was entirely different from the circumstances of 1984. The court's basic contention—that legislative actions to require family cooperation and

[26] See *e.g.*, *Xerox Corp.* v. *County of Harris*, 459 U.S. 145, 150 (1982) (analyzing "forerunner of the present statute"); *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535, 541 (1954) ("To read the Defense Production Act of 1950 without reference to [a predecessor statute] * * * is to read it out of the context in which Congress enacted it.").

improve state incentives for "tracking down nonresident parents who are delinquent in making child support payments" had "substantially eviscerated" the justification for the disregard as a parental payment incentive (Pet. App. 10a)—is belied by repeated congressional findings that nonpayment of child support by noncustodial parents remains a grave national problem.[27] Indeed, respondents' own submission to the district court illustrates the continuing relevance of incentives for parental child support payments. See J.A. 46 (Affidavit of David Jones) ("If my son is going to be forced to receive ADC, and my money will be used to finance the ADC program, I see no reason for me to keep paying child support.").[28]

Thus, the court of appeals erred in concluding that its reading of the purpose of the disregard justified rejecting the Secretary's interpretation.[29]

---

[27] See, *e.g.*, § 23(a), 98 Stat. 1329; H.R. Rep. No. 159, 100th Cong., 1st Sess. 40 (1987). See also *Hicks* v. *Feiock*, 108 S. Ct. 1423, 1436 (1988) (O'Connor, J., dissenting) (" 'The failure of enforcement efforts in this area has become a national scandal.' • • • The facts of this case illustrate how easily a reluctant parent can evade a child support obligation. Congress recognized the serious problem of enforcement of child support orders when it enacted the Child Support Enforcement Amendments of 1984.").

[28] See also *Bowen* v. *Gilliard*, 483 U.S. at 598 ("The District Court had before it evidence that the DEFRA amendments were severely impacting some families. For example, some noncustodial parents stopped making their support payment because they believed that their payments were helping only the State, and not their children.").

The court of appeals also plainly erred in stating that at the time of the 1974 disregard, "social security payments were not a factor in determining a family's eligibility for AFDC, so there was no occasion for Congress to consider whether the disregard should also apply to such payments." Pet. App. 9a. At that time, child's insurance benefits were counted as part of an applicant's income if the family filing unit included the child receiving the child's insurance benefits. Before the family income requirement, the family had *the option* of whether to include the child or not, but the court of appeals is incorrect in suggesting that social security payments were never "a factor" in AFDC determinations before the family income requirement. See 1 Senate Comm. on Finance, *supra*, at 980.

[29] We do not dispute that one aspect of the child support disregard is that it mitigates hardship. By definition, AFDC recipients are needy, and there is no question that any disregard—or any increase in benefits—mitigates hardship. But the disregard at issue here is not a general $50 bonus for all AFDC recipients, nor is it applicable to income from all sources; it is confined to "any child support payments." Thus it is reasonable to conclude that the disregard serves multiple purposes, one of which—an incentive to obtain payments from absent parents—is related to the defining term ("child support payments").

To the extent that the court of appeals concluded that the disregard was enacted solely to mitigate the hardship of the family income requirement, moreover, the child support disregard was ill-tailored to serve that exclusive purpose. The disregard did not mitigate hardship from the change for all families adversely affected by it (*i.e.*, families in which family members with other sources of income had previously been excluded from the family filing unit), and it did provide an additional $50 per month for some families who were not adversely affected by the family income requirement (*i.e.*, families in which children for whom parental child support payments were made had previously been included in the filing unit). Moreover, even if the purpose is limited to mitigation of hardship, an incentive aspect remains: the disregard for child support payments from absent parents only mitigates hardship if payments are actually made by the absent parent.

2. The court of appeals also rejected the Secretary's interpretation because it could perceive no rational "distinction between support derived directly from a father's wages and support provided indirectly through Title II payments." Pet. 11a. But there are many differences between the two types of payments, and these differences justify differential treatment. Most obviously, there is a fundamental distinction because child's insurance benefits are paid and guaranteed by the federal government; parental child support payments, in contrast, are dependent on the resources and compliance of an absent parent. The fact that child's insurance benefits result from the coverage of an insured wage earner does not alter the fact that their payment is automatic, whereas the payment of child support is often highly uncertain.[30]

---

[30] The court of appeals emphasized that, under the Secretary's interpretation, a child receiving child's insurance benefits is treated less favorably than a child for whom child support payments from an absent parent are paid and stated that there is "[n]o rational basis" for a distinction between them. Pet. App. 12a. Because the federal government pays child's insurance benefits, however, under the court of appeals' holding, the child receiving child's insurance benefits would be considerably advantaged over the child relying on parental child support payments; the child receiving child's insurance benefits would receive the $50 per month disregard automatically, while the child rely-

Other distinctions are also apparent. While parental child support payments involve the problem of support from absent, living parents, child's insurance benefits are frequently paid under entirely different circumstances. See *Todd* v. *Norman*, 840 F.2d at 610 n.2 The largest number of child's insurance recipients consists of the children of deceased parents;[31] other child's insurance benefits are paid to children living with a disabled parent. 42 U.S.C. 402(d)(1). Child support payments from absent parents, moreover, may vary according to the parent's current resources or the child's actual needs. H. Krause, *Child Support in America* 18 (1981). Child's insurance benefits, in contrast, are paid according to a formula based on the insured wage earner's prior wages. *Califano* v. *Jobst*, 434 U.S. at 52; *Hopkins* v. *Cohen*, 390 U.S. 530, 531-532 (1968); 42 U.S.C. 402(d)(2). Rather than the virtual identity claimed by the court of appeals, then, child's insurance benefits and child support payments have fundamentally different characteristics; their supposed similarity thus provides a weak basis for overriding the Secretary's judgment that child's insurance benefits are not included in the statutory term "child support payments."

3. Finally, the court of appeals emphasized that some States permit child's insurance benefits to satisfy child support obligations. Pet. App. 11a-12a. This state court treatment was apparently viewed as important because, as the district court stated, a "family's eligibility for the $50 remittance should not turn upon the absent father's ability to work. For example, the law should not allow a family to receive the $50 rebate when a child is supported by a working father, but deny that family the rebate when the father becomes disabled and must provide the support indirectly through Social Security benefits." *Id.* at 20a. If this is the theory, however, it is wholly inapplicable to a large category of child's insurance benefits recipients—those who

ing on payments from an absent parent would receive the disregard only when payments are made by the absent parent.

[31] Two of the named plaintiffs—Crystal McClanahan and Robert Turner—receive child's insurance benefits because the child's father is deceased. See J.A. 29, 30, 54.

are beneficiaries because an insured parent has died, including two of the named plaintiffs here (see J.A. 29, 30, 54).[32] For the many children receiving child's insurance benefits because of a deceased parent, there is no outstanding child support obligation from that parent at all, and the reliance on state treatment of the child's insurance benefits as satisfying outstanding child support obligations is simply irrelevant.

Even as to those recipients of child's insurance benefits whose insured parents are under outstanding child support obligations, however, the court's reliance on the state courts' treatment of the benefits is unfounded. As an initial matter, a State's conclusion that child's insurance benefits *satisfy* the obligation of providing child support does not mean that child's insurance benefits *become* child support payments. Moreover, state treatment of child's insurance benefits in the context of child support obligations varies widely. Some States have not permitted child's insurance benefits to satisfy child support obligations; other States have permitted such treatment only after an extensive equitable analysis. See *Todd* v. *Norman*, 840 F.2d at 611; Annotation, *Right To Credit On Child Support Payments For Social Security Or Other Government Dependency Payments Made For Benefit Of Child*, 77 A.L.R.3d 1315 (1977 & Supp. 1989). Even for those children who have outstanding child support obligations from absent parents, then, state treatment of the child's insurance benefits is varied and inconsistent.

Accordingly, state treatment of child's insurance benefits with respect to outstanding child support obligations—like the other two factors cited by the court of appeals—fails to justify rejection of the Secretary's interpretation of the scope of the "child support" disregard.

[32] As discussed, moreover, when a child receives child's insurance benefits because an insured parent is disabled, the parent need not even be "absent," in contrast to the district court's example of an "absent father."

D. Excluding Social Security "Child's Insurance Benefits" From The "Child Support" Disregard Does Not Raise Constitutional Problems

The court of appeals also relied on concerns about the constitutionality of the disregard if it does not apply to Social Security child's insurance benefits.[33] However, a congressional determination to disregard the first $50 of child support payments from absent parents, but not child's insurance benefits, easily passes constitutional muster. This kind of "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Bowen* v. *Gilliard*, 483 U.S. at 601 (internal quotations omitted). As discussed, an evident purpose of the $50 disregard was to help secure the cooperation of beneficiaries in the collection of support payments and to provide a payment incentive for noncustodial parents. No such incentives are needed with respect to child's insurance benefits, whose payment is guaranteed by the federal government. This difference is surely sufficient to sustain limiting the disregard to parental support payments. The problem of nonpayment of child support remains a congressional priority.[34] Despite the court of appeals' pessimism about the efficacy of a $50 incentive in light of subsequent developments, it was clearly permissible for Congress to decide that a further incentive to collection and payment of parental support payments was needed. See generally *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

---

[33] See Pet. App. 12a ("No rational basis exists for according one class of families the mitigating benefit of the disregard provision while depriving another arguably indistinguishable class of families of the same benefit. • • • This sort of unreasoned distinction raises equal protection concerns.").

[34] See, *e.g.*, § 23(a), 98 Stat. 1329; 134 Cong. Rec. S7651(daily ed June 13, 1988) (statement of Sen. Bentsen) ("If we want to reform the welfare system, let us start with an all-out effort to collect child support. The Congress enacted strong legislation in 1975 and in 1984, but despite that legislation only a small fraction of children who live with single parents receive the full credit as awarded to them by the courts. Many receive nothing at all.").

The court of appeals' summary invocation of "equal protection concerns" (Pet. App. 12a) plainly does not warrant construing the term "child support" in the disregard in a manner contrary to its usage in other parts of the AFDC program and the Social Security Act; nor does it justify overriding the Secretary's judgment about the meaning of that term for the program he is charged with administering. The principle that statutes should be construed to avoid constitutional problems is applicable when there is "a serious doubt of their constitutionality." *International Ass'n of Machinists* v. *Street*, 367 U.S. 740, 749 (1961). Applying the child support disregard to payments from absent parents and not applying it to child's insurance benefits raises no such "serious doubt."

CONCLUSION

The judgment of the court of appeals should be reversed.

KENNETH W. STARR
Solicitor General
STUART M. GERSON
Assistant Attorney General
THOMAS W. MERRILL
Deputy Solicitor General
CLIFFORD M. SLOAN
Assistant to the Solicitor General
ROBERT S. GREENSPAN
ROBERT D. KAMENSHINE
Attorneys

FEBRUARY 1990

U.S. GOVERNMENT PRINTING OFFICE 1990—241 699/00751